

IN THE UNITED STATES DISTRICT COURT

FILED
BILLINGS DIV.

FOR THE DISTRICT OF MONTANA

2009 JAN 22 PM 1 27

BUTTE DIVISION

PATRICK E. DUFFY, CLERK
BY _____
DEPUTY CLERK

**ECONOMIC RESEARCH
SERVICES, INC.,**

Plaintiff,

VS.

**NORTHWESTERN
CORPORATION,**

Defendant.

CV-08-02-BU-RFC

ORDER ADOPTING FINDINGS AND RECOMMENDATIONS OF U.S. MAGISTRATE JUDGE

On December 17, 2008, United States Magistrate Judge Carolyn Ostby entered her Findings and Recommendations in this case. *Doc. 34*. Magistrate Judge Ostby recommends this Court dismiss Defendant's Counterclaims of deceit and actual fraud (Counts V and VI, respectively) for failure to satisfy the particularity requirements of Fed.R.Civ.P. 9(b).

Further Magistrate Ostby notes that the Defendant's arguments raised here were also raised in CV 08-02-BU-RFC-CSO wherein this Court granted dismissal of the same claims.

Upon service of a magistrate judge's findings and recommendation, a party has 10 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, no party filed objections to the Findings and Recommendation. Failure to object to a magistrate judge's findings and recommendation waives all objections to the findings of fact. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1999). However, failure to object does not relieve this Court of its burden to review de novo the magistrate judge's conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

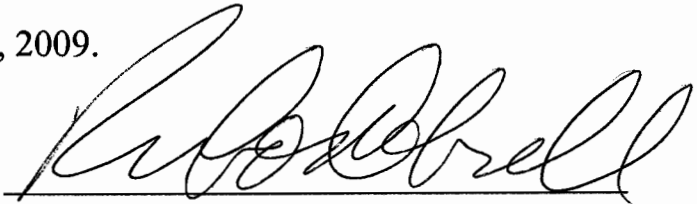
After an extensive review of the record and applicable law, this Court finds Magistrate Judge Ostby's Findings and Recommendation are well grounded in law and fact and adopts them in their entirety.

Accordingly, **IT IS HEREBY ORDERED** Plaintiff's Motion to Dismiss Counts V and VI (*Doc. 24*) is **GRANTED**.

IT IS FURTHER ORDERED that the Counts V and VI shall be dismissed without prejudice.

The Clerk of Court shall notify the parties of the making of this Order.

DATED the 21st day of January, 2009.


RICHARD F. CEBULL
CHIEF U.S. DISTRICT JUDGE